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“TRANSPARENCY AND RULE OF LAW IN LATIN AMERICA”

Mr. Chairman, thank you for the opportunity to appear before the Subcommittee on the Western Hemisphere of the House International Relations Committee. I have had the privilege to appear before you on a number of occasions over the past weeks, where I have discussed with you such issues as the state of democracy in the Western Hemisphere, rising crime and gang violence in Latin America and, most recently, key accomplishments related to Plan Colombia. Today, I will be discussing the related and equally important issues of transparency, rule of law, and governance in Latin America.

Last week, the elected Presidents of Central America and the Dominican Republic met with President Bush to discuss the state of play of the Central America-Dominican Republic Free Trade Agreement. They said that the overriding benefit of CAFTA, even beyond its value in promoting economic growth and generating employment, is that it will strengthen democracy. They are right. The link between economic prosperity and democracy is

becoming increasingly irrefutable. CAFTA-DR is teaching us that trade, democracy, and development are all means to the same end – freedom, security, and prosperity. We at USAID recognize this in all of our efforts to promote democratic consolidation and economic growth throughout Latin America and the Caribbean.

In 2001, when USAID Administrator Natsios took office, he commissioned a report entitled *Foreign Aid in the National Interest*. The key message of that report was the importance of mainstreaming development into the national foreign policy process. The report's findings supported the vision laid out in the National Security Strategy of the United States, published in September 2002, which served as President Bush's vehicle for announcing his determination to help build strong democracies throughout the world. This has been a core task of USAID since its inception at the time of the Marshall Plan. Indeed, much of USAID's experience in implementing large scale democracy strengthening programs commenced in Latin America in the early 1980s and focused on addressing large-scale human rights abuses perpetrated under the notorious Central American dictatorships.

I. From Despotism to Democracy - Latin America Has Come a Long Way

In the early 1990s, Latin America emerged from two decades of authoritarian rule, violent civil strife, and widespread human rights violations. The Latin America we know today is largely democratic as civilian governments have replaced military rule in nearly every country in the hemisphere. Indeed, many countries have now witnessed several generations of free and fair elections. As democracy has taken root, human rights violations have been drastically reduced and governments have taken actions to promote peace and reconciliation. Latin America has also witnessed an expansion of decentralization with central governments beginning to share power and responsibility with local governments. This has created new spaces of political participation for historically excluded populations and improved local governments' capacity to deliver on the promises of democracy.

The attitudes of governments in the region have also significantly evolved over the last fifteen years and political will to address these vital, but sensitive, subjects is on the rise. Rule of law and corruption have become central in political party platforms across the region, and governments are

increasingly promoting initiatives to increase transparency, such as freedom of information legislation and the creation of ombudsman offices to monitor corruption allegations. “Corruption” is no longer an unmentionable word in the hallways of Latin American government, as it was just fifteen years ago, and governments are finally showing the will to aggressively prosecute official wrongdoing.

II. Poor Governance is the Bane of Development

Although democracy has taken hold across most of the region, Latin America is conveying a clear message that democracy and good governance are not one and the same. I should note here that the term *governance* encompasses the capacity of the state to deliver public services, the commitment to the public good, the rule of law, and the degree of transparency and accountability. Elected governments alone do not guarantee good governance. Although Latin America has made real progress toward democratic consolidation in the past decades, we are seeing some very worrisome trends – each of which is linked to poor governance – that could very well unravel many of these democratic gains.

First, Latin America is one of the most violent regions in the world, with crime rates more than double the world average. High levels of crime are not only creating instability in many countries – they are also reducing overall productivity and discouraging investment flows. As I mentioned to the Subcommittee on April 20, in my testimony on Crime and Gang Violence, Latin America is caught in a vicious circle, where economic growth is thwarted by high crime rates and where a lack of economic opportunity, in turn, is contributing to a rise in crime. The large numbers of youth without realistic expectations of employment are fueling a growing problem of gang violence in Central America, Mexico, Jamaica, and Colombia. In addition, Latin America is contending with a number of other debilitating threats including organized crime, narco-trafficking, money laundering, and trafficking in persons. It is important to note that such illicit activities flourish where the rule of law is weak, corruption is rife and public institutions lack accountability and oversight.

A second key trend that is compromising development efforts is corruption. Corruption destroys citizen trust in government and undermines government legitimacy. Corruption exacerbates poverty, deters foreign investment, stifles economic growth and sustainable development, and undermines legal

and judicial systems. The World Bank estimates that corruption and weak rule of law reduce annual growth by as much as fifteen percent. By diverting or misallocating government resources, corruption prevents public services from reaching those most in need of them.

Public sector corruption is, above all else, a symptom of failing governance. In Latin America, there are a number of drivers that are fueling corruption, all of which are linked to weak institutions and the absence of good governance structures. This third trend of persistently weak institutions is compromising governments' ability to deliver services to their constituents. For example, the civil services in many countries are still in transition after having undergone a series of reforms, and are thus characterized by weak accountability, low levels of transparency, and inefficiency. These conditions often give rise to a structure of incentives that is conducive to corrupt behavior. In addition, cumbersome legislation, bogged down with ill-defined and overlapping roles and responsibilities of various government offices, increases the discretionary power of public officials. When this discretion is coupled with lack of oversight and accountability, the opportunities for corruption further expand. We also know that corruption thrives where the rule of law is weakly embedded and where justice is partial. One study found that 96 percent of crimes in Mexico went unpunished between 1996 and 2003. Throughout Latin America, we find that laws apply to some but not to others, and laws that are enforced not in the name of the public interest, but to advance individual interests.

III. Waning Public Faith in Democracies That Aren't Delivering

The relatively young democracies of Latin America are struggling with governance challenges that are eroding government legitimacy and stability which brings us to the fourth disturbing trend that is characterizing the region – undermined public support for democracy. According to one United Nations study, only roughly 43 percent of Latin Americans are “fully supportive” of democracy. Last year, USAID-funded public surveys on attitudes toward democracy revealed some very worrisome findings. The surveys revealed that, as citizens become increasingly frustrated with rising levels of crime, soaring corruption, and poor service delivery, they are losing their faith in democracy and democratic institutions. Even more troubling, the least trusted democratic institutions in Latin America are also among the most important institutions in a democracy – political parties, the justice system, legislatures, and the police.

IV. Poor Governance Strains All Development Efforts

When governance and rule of law are weak, all efforts to promote democratic development suffer. The rule of law is an essential underpinning of democracy and a market economy. It establishes and protects legitimate democratic authority, safeguards human rights and civil liberties, provides a venue for dispute resolution, and is a necessary check against the abuses of executive power. Good governance and rule of law are critical to every sector in which USAID works, including economic growth, health, education, and the environment.

For example, efforts to reduce poverty and promote free trade and economic growth cannot compete with the offspring of bad governance, which include poorly defined property rights, high transaction costs and economic risks, corruption, and greatly reduced domestic and foreign investment. A prerequisite for trade integration is a rule-based system where contracts are honored, where governments provide the legal infrastructure needed for transparent enforcement, and where information can be exchanged openly and freely. Former Secretary of State Colin Powell accurately zeroed in on the problem when he remarked that “Private capital is a coward, a chicken. It flees from corruption and bad policies. It doesn’t want to go where there’s a conflict. It doesn’t want to go where there’s corruption.”

In the health sector, we see the same trends affecting governments’ ability to deliver much needed health services. A World Bank study last year concluded that even a very modest improvement in corruption levels results in a 29 percent decrease in infant mortality rates and a 52 percent increase in satisfaction among recipients of public health care. The same holds true for the education and environment sectors. In the education sector, expenditure leakages and bribes for services have been shown to eat up upwards of 50 percent of national education budgets. In the environmental arena, corruption in the extractive industries, such as forestry, mining, natural gas, and oil, is particularly destructive, not only due to the large sums of money typically involved, but also because of the long-term devastation that such activities can pose to a country’s natural resource reserve if proper safeguards are not institutionalized.

V. USAID Programs

The United States continues to be Latin America's largest donor. President Bush has been firm in his commitment to the strengthening of democracy in our region, as evidenced by the steady increase in funding for democracy assistance since he came into office. In FY 2001, USAID's budget for building democracy, strengthening governance, promoting human rights, and addressing conflict in the Latin America and Caribbean region was approximately \$106 million. This year, FY 2005, the USAID budget for the same activities is approximately \$271 million. These numbers demonstrate President Bush's and Administrator Natsios' understanding that democracy-building is a long-term process that does not end with elections. As the President stated in a speech at the International Republican Institute last week, "When people risk everything to vote, it can raise expectations that their lives will improve immediately - but history teaches that the path to a free society is long and not always smooth."

USAID continues to be engaged in a number of efforts to strengthen the rule of law, promote justice sector and legal reform, and increase transparency and accountability in Latin America. In fact, justice sector modernization remains the largest focus of USAID governance programs in the region. Rule of law and justice reform initiatives are undertaken as part of democracy promotion programs, with the goal of establishing democratic authority, protecting rights, exerting a check on other branches of government, and complementing efforts to build security in post-conflict situations. In addition, legal reform activities such as commercial code reform, development of tax law systems, intellectual property rights protection, and commercial dispute resolution, are undertaken to promote economic growth.

With USAID support, the region has progressed on a number of fronts towards increasingly modernized justice systems – specifically, the transition to oral, adversarial trials and a consolidation of the independence of the judiciary. In 1992, Guatemala became the first country in Latin America to comprehensively reform its Criminal Procedures Code. Eleven countries followed in Guatemala's footsteps, resulting in twelve countries that have adopted some form of modern accusatory, oral criminal proceedings. This set the stage for the long-awaited elimination of the much abused all-paper systems. As a result of these reforms, between 1982 and 2002, the incidence of pre-trial detention dramatically declined in many

countries. In Mexico, for example, the level of pre-trial detention declined from 74 to 41 percent and, in Bolivia, from 90 to 36 percent. Oral criminal trials have also significantly reduced the length and cost of trials. In Bolivia, the length of trials dropped from an average of four years to four months, while the cost of trials decreased from an average of \$2,400 to \$400.

Since the 1980s, USAID has supported the creation of and strengthening of other justice sector institutions, including independent prosecutors, constitutional courts, judicial councils, and human rights ombudsmen. USAID has trained thousands of judges, prosecutors, litigators, law professors, and community activists to ensure a smooth transition to modern judicial systems. In Honduras and Bolivia, every criminal judge in both countries was trained on their newly adopted criminal procedures. USAID also works with national and regional civil society networks to improve citizens' roles in monitoring government functions to guarantee that government is serving the interests of its constituents, and to ensure that citizens have access to information that will help them understand and evaluate government decisions.

The National Security Strategy clearly identifies development as the third key tool, along with defense and diplomacy, for achieving national security. We have come to recognize that security is the foundation upon which all progress in development rests. USAID is increasingly working with police and the range of other actors in the security sector chain – including the judicial and legal systems, the military, and communities – to address pressing security challenges in the region. To do so, countries must overcome the legacy of police in many Latin American countries as law breakers rather than law enforcers. Community policing efforts in El Salvador, Jamaica, and Colombia are demonstrating that transforming the historically negative relationship between the police and the communities they serve into a collaborative relationship based on mutual trust, is not an unrealistic goal.

Here in the US, a common quip is that there are too many lawyers, too much law. However, in many other parts of the world, Latin America included, the opposite is often true. The issue is not too much law or too many rich lawyers, but too little access to law and often, not enough of it. Binding contracts and the courts that should justly and judiciously enforce them are often reserved for a small elite, while the majority of the country is left to deal with arbitrary action and decision. The challenge then is to increase the

access and quality of justice for all citizens. In Guatemala, Colombia, and El Salvador, justice centers, justice houses, and alternative dispute resolution mediation centers are providing a variety of services to the poor, ranging from arbitration and witness protection to neighborhood dispute resolution and family violence response services. These justice centers and houses are not only increasing access to legal services, but also to other social services, and are making justice for the poor more swift and more effective.

USAID also supports the development of modern, computerized case-tracking systems to improve the administration of justice and reduce opportunities for corruption. In Guatemala, the number of lost files dropped from 1,000 in 1997 to 1 in 1999. Improvements in legal education and new merit-based selection systems are ensuring that more and more judges and prosecutors are selected based on their merit, rather than personal connections.

The legitimacy of governments is derived from the governed. Only if governments are accountable to democratic oversight and bound by and respectful of the rule of law can governments claim to act on behalf of the people. It is this legitimacy which gives governments the capacity to implement successful anti-corruption reforms and generates support from society for these reforms. In January of this year, the Administrator highlighted the need to address corruption when he approved USAID's new Anti-Corruption Strategy. Using the strategy as our guide, we will do more to spotlight the dynamics of grand corruption – corruption that involves the most vested, economic and political elite in a country and generally the largest sums of money. This will involve tackling the very incentives structures that allow those to benefit from the status quo. We understand that this is no small task. We will work closely with our colleagues at the State Department and other agencies, and reformers in the countries where we work, to study the problem and develop new programs to deal with grand corruption that complement our ongoing efforts to address lower-level administrative corruption. We will also improve our understanding of how corruption affects the various sectors in which we work and design multi- and cross-sectoral programs to address it. Finally, we will support reformers with rapid response assistance, and stand behind diplomatic initiatives that raise anticorruption issues to the highest level. All of these efforts will help support United States leadership in combating corruption and building good governance across Latin America and the world.

VI. Conclusion

The *Foreign Aid in the National Interest* report that I mentioned early on in my testimony rightly states that, “no amount of resources transferred or infrastructure built can compensate for – or survive – bad governance. Predatory, corrupt, wasteful, abusive, tyrannical incompetent governance is the bane of development.” The President’s Millennium Challenge Account, or MCA, recognizes the fundamental correlation between governance and the effectiveness of development aid. Eligibility for MCA funds is contingent on, among other things, a government’s commitment to “ruling justly.” As President Bush stated, since “good government is an essential condition of development [the MCA] will reward nations that root out corruption, respect human rights, and adhere to the rule of law.” That is, a government must first demonstrate the political will and clear commitment to addressing corruption and improving governance in their country before they will be considered for MCA assistance. USAID will continue to work closely with the Millennium Challenge Corporation on the MCA “Threshold Program”—an MCA program currently administered by USAID that supports countries the MCC has determined to be on the threshold of MCA eligibility. Three countries in Latin America were among the first to achieve eligibility for MCA assistance – Bolivia, Honduras, and Nicaragua – and two have attained MCA threshold status – Guyana and Paraguay. I look forward to continue working with my fellow panelists and colleagues in the Department of State, Millennium Challenge Corporation, and other agencies to promote economic growth and democratic consolidation in the Americas.

Our partnership with Latin American governments to strengthen the rule of law and increase transparency and accountability is one of mutual benefit. It is clearly in the US Government’s interest to utilize our toolkit of diplomacy, defense, and development to counter the destabilizing effects that poor governance, corruption, and weak rule of law have on political and economic systems throughout Latin America, and the threats they pose to vital American interests. President Bush, during his meeting with the Presidents of Central America and the Dominican Republic, emphasized the benefits of continued cooperation with our neighbors in Latin America. He stated, “The United States was built on freedom, and the more we have of it in our backyard, the freer and safer and more prosperous all of the Americas will be.”

Working in partnership with Latin American governments, we can be true to the principles that President Bush and Secretary Rice have called essential to the health of all democracies – security, prosperity, and dignity. Working in partnership, we can honor the hundreds of thousands of Latin Americans that gave their lives in their struggle to leave a better, more democratic and just world behind for their children.

Mr. Chairman, this concludes my statement. I welcome any questions that you and other Members of the Subcommittee might have.